

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
SAM BIRD, JUDGE

DIVISION I

CACR05-600

June 27, 2007

STEVEN SPARKS

APPELLANT

APPEAL FROM THE WASHINGTON  
COUNTY CIRCUIT COURT  
[NO. CR04-323-1]

V.

HON. WILLIAM A. STOREY, JUDGE

STATE OF ARKANSAS

APPELLEE

AFFIRMED

Appellant Steven Sparks was convicted by a jury on February 15, 2005 of three counts of rape and three counts of terroristic threatening. He received sentences totaling forty-six years in the Arkansas Department of Correction, to be run consecutively to another sentence in a Missouri case. Appellant's counsel initially filed with this court a motion to withdraw, arguing that the appeal was wholly without merit pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Rule 4-3(j) of the Rules of the Arkansas Supreme Court and Court of Appeals. In our unpublished opinion *Sparks v. State*, CACR 05-600 (Jan. 24, 2007), we ordered rebriefing because counsel's brief was inadequate and we could not discern whether he was entitled to be relieved as counsel on his asserted ground that the appeal had no merit.

Counsel now has briefed an appeal on the merits, raising two points. First, he contends that the trial court erred in sustaining fifteen objections by the State during cross-examination

of the victims. Second, he contends that the court erred in sustaining two objections by the State to testimony by defense witnesses.

Matters pertaining to the admissibility of evidence are left to the sound discretion of the trial court, whose rulings will not be reversed absent an abuse of discretion and a showing of prejudice. *Harmon v. State*, 340 Ark. 18, 8 S.W.3d 472 (2000). We reject Sparks's request that, in light of his lengthy sentence, we scrutinize his case as closely as if it were a case for a capital offense. Such scrutiny is required only when a sentence is death or life imprisonment. Ark. Sup. Ct. R. 4-3(h) (2007). Here, the trial court did not abuse its discretion regarding the admissibility of testimony; therefore, the convictions are affirmed.

At trial the State presented testimony by Sparks's step-daughter, biological daughter, and biological son, the youngest of whom was eighteen. Each of them testified about being raped by Sparks years earlier and about his threats against them and their mother. While cross-examining the victims and through his own witnesses, Sparks attempted to show that he had done no wrong and that the victims perjured themselves out of hatred induced by their mother.

*Whether the trial court abused its discretion by sustaining the State's objections to appellant's questions during cross-examination of the victims*

Sparks's arguments in this point on appeal regard three groups of objections that were sustained to questions that he asked while cross-examining the victims. In the first group, the court sustained seven objections by the State that the witnesses had already answered questions that Sparks attempted to ask. He states on appeal that "a close inspection of the record reveals that none of the questions had been asked or answered." The State responds that these

questions indeed had been asked and answered, and our review of the abstracted testimony validates the State's response. Thus, we summarily reject Sparks's first argument.

Sparks next asserts error during his cross-examination of the victims because, in four instances, the State presented no grounds for making objections and the trial court gave no reason for sustaining those objections. We will not address this argument because it was not made to the trial court. See *Woolbright v. State*, 357 Ark. 63, 75, 160 S.W.3d 315, 323 (2004) (reciting the rule that an appellant is bound by the scope and nature of the arguments made at trial).

Another group of rulings consists of four times that the trial court sustained the State's objections that Sparks's questions exceeded the scope of cross-examination. A party on appeal cannot change grounds for an objection and must demonstrate prejudice from the trial court's ruling; furthermore, the burden of obtaining a ruling is on the movant, and unresolved objections are waived and may not be relied upon on appeal. *Rodgers v. State*, 360 Ark. 24, 199 S.W.3d 625 (2004); *Vanesch v. State*, 343 Ark. 381, 37 S.W.3d 196 (2001). Here, we agree with the State that no abuse of discretion occurred with regard to each ruling because Sparks has failed to show prejudice, his arguments were not presented below, or he did not obtain rulings on his arguments.

*Whether the trial court abused its discretion by sustaining two objections by the State on the basis of hearsay and relevancy*

Sparks first contends that the trial court abused its discretion by sustaining the State's relevancy and hearsay objections to his own testimony about a letter, apparently written by one of the victims. He asserts that this testimony should have been allowed as an attempt to

rebut the victim's trial testimony and to explain his version of events. We do not reach the merits of this argument because Sparks failed to proffer the evidence that he sought to admit and its substance is not readily apparent. Unless the substance of excluded evidence is apparent from the context, a party must proffer the evidence at trial so that the decision can be reviewed on appeal. *Arnett v. State*, 353 Ark. 165, 122 S.W.3d 484 (2003).

Finally, Sparks challenges the exclusion of his mother's testimony about curse names that his son called him. Although Sparks contends that the trial court's hearsay ruling was in error, he does not assert that this testimony fell within any exceptions to the rule that hearsay testimony is generally inadmissible. *E.g.*, *Hutcheson v. State*, 92 Ark. App. 307, 319, 213 S.W.3d 25, 33 (2005); Ark. R. Evid. 804(b)(3). We conclude that the trial court did not abuse its discretion in excluding this testimony.

Affirmed.

VAUGHT and BAKER, JJ., agree.